

Memorandum 94-48

**Annual Report for 1994**

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Attached to this memorandum is a draft of the Commission's *Annual Report for 1994*. If approved, the staff will send it to the printer after the meeting.

We have not included the numerous appendices that will be printed with the Annual Report, in order to save copying costs and unnecessarily burdening Commissioners. These items are listed in the table of contents on pages 905-906 of the attached Annual Report. All of these reports and recommendations have been previously approved by the Commission. If any Commissioner wishes to examine any of the listed appendices, let the staff know and we will send a copy. In addition, we will have a complete copy available at the November meeting.

Much of the Annual Report language remains virtually the same as in past reports, but particular attention should be paid to the revised and new material concerning Major Studies in Progress (pp. 911-12), Commission Budget (pp. 918-919).

The section on Activities of Commission and Staff (pp. 919-20) is new. The Commission should consider whether this is a useful addition to the Annual Report. If so, Commissioners should notify the staff of any activities relating to the Commission's function, such as speeches to bar associations or on panel discussions, journal or newspaper articles, etc., for inclusion in this section of the Annual Report.

If any cases holding statutes unconstitutional are discovered before the meeting, the staff will present the required report in a supplement.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

1994]

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STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

**Annual Report for 1994**

**California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739**

Cite this pamphlet as *Annual Report for 1994*, 24 Cal. L. Revision  
Comm'n Reports \_\_\_\_ (1994).

## SUMMARY OF WORK OF COMMISSION

### **Recommendations Enacted in the 1994 Legislative Session**

In 1994, three bills introduced to effectuate the Commission's recommendations were enacted. These bills amended 35 sections, added 157 sections, and repealed 89 sections of California statutes. Commission-recommended legislation enacted in 1993 concerned the following subjects:

- Powers of attorney
- Family law
- Orders to show cause and temporary restraining orders

A bill relating to the effect of joint tenancy title on marital property was not enacted. In addition, the Commission's report on trial court unification under Senate Constitutional Amendment 3 was not implemented because SCA 3 was not adopted by the Legislature.

### **Recommendations to the 1995 Legislative Session**

In 1995, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Administrative adjudication
- Debtor-creditor relations, including attachment, exemptions from enforcement of money judgments, and other matters
- Uniform Prudent Investor Act

### **Commission Plans for 1995**

During 1995, the Commission will work on judicial review of agency action, the Uniform Unincorporated Nonprofit Association Act, unfair competition litigation, and the business judgment rule and derivative actions. The Commission will consider other subjects as time permits, including the homestead and retirement account exemptions from enforcement of money judgments, and evidentiary rules applicable to electronic data.



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STATE OF CALIFORNIA

PETE WILSON, Governor

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November 18, 1994

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1994.

Three out of four bills introduced in 1994 to effectuate the Commission's recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

- Senator Roberti (concurrent resolution continuing the Commission's authority to study previously authorized topics)
- Senator Campbell (Power of Attorney Law, effect of joint tenancy title on marital property)
- Assembly Member Caldera (presenting miscellaneous Family Code technical corrections on behalf of the Assembly Judiciary Committee)
- Assembly Member Snyder (presenting orders to show cause and temporary restraining orders on behalf of the Assembly Judiciary Committee)

The bill on the effect of joint tenancy title on marital property was not enacted. The Commission's report on trial court unification under Senate Constitutional Amendment 3 was not implemented because SCA 3 was not adopted by the Legislature.

The Commission held six two-day meetings and one one-day meeting during 1994. Meetings were held in Sacramento and San Jose.

Respectfully submitted,

Daniel M. Kolkey  
*Chairperson*

## ANNUAL REPORT FOR 1994

### Introduction

The California Law Revision Commission<sup>1</sup> was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law in order to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker

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1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 24 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 18,516 sections of the California statutes: 8,681 sections have been added, 3,002 sections amended, and 6,833 sections repealed. The Commission has submitted more than 280 recommendations to the Legislature. Approximately 96% of these recommendations have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Annual Report.

### **1995 Legislative Program**

In 1995, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Administrative Law**

The Commission plans to submit a recommendation concerning administrative adjudication by state agencies. The recommendation will represent the first comprehensive revision of this law in 50 years.

#### **Debtor-Creditor Law**

The Commission plans to submit a recommendation concerning debtor-creditor law, including the following:

- Attachment where claim is partially secured
- Exemptions from enforcement of money judgments
- Miscellaneous debtor-creditor matters

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3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 2 *infra*.

4. See list of recommendations and legislative action in Appendix 3 *infra*.

**Probate Law**

The Commission plans to submit a recommendation concerning the Uniform Prudent Investor Act, which would be added to the Trust Law.

**Major Studies in Progress**

During 1995, the Commission plans to work on four major topics: judicial review of agency action, the Uniform Unincorporated Nonprofit Association Act, unfair competition litigation, and the business judgment rule and derivative actions. The Commission will also consider other subjects to the extent time permits.

**Judicial Review of Agency Action**

Judicial review of agency action is the second phase of the Commission's study of administrative law. The first phase — administrative adjudication by state agencies — will be the subject of a Commission recommendation to the 1995 legislative session.

The Commission has considered three background studies prepared by its consultant, Professor Michael Asimow of UCLA Law School, on "Judicial Review of Administrative Decision: Standing and Timing" (September 1992), "The Scope of Judicial Review of Administrative Action" (January 1993), and "A Modern Judicial Review Statute to Replace Administrative Mandamus" (November 1993).

During 1995 the Commission plans to complete its review of these studies and circulate a tentative recommendation on the matter for comment, before finalizing a recommendation to the Governor and Legislature.

**Uniform Unincorporated Nonprofit Association Act**

The Commission has retained a consultant, Professor Michael Hone of University of San Francisco Law School, to prepare an analysis of the Uniform Unincorporated Nonprofit Association Act (1992). The Commission plans to commence consideration of this matter early in 1995, after the anticipated receipt of Professor Hone's analysis. The Commission hopes to complete work on this topic during 1995 and have a recommendation to the Governor and Legislature on it for the 1996 legislative session.

**Unfair Competition Litigation**

The Commission plans to commence consideration of issues involved in unfair competition litigation under Business and Professions Code Section 17200 *et seq.* on receipt of a background study on the subject early in 1995. The Commission's consultant on this topic is Professor Robert Fellmeth of University of San Diego Law School.

**Business Judgment Rule and Derivative Actions**

The Commission has retained Professor Melvin Eisenberg of University of California, Berkeley, Law School to prepare a background study on two aspects of corporate governance: the business judgment rule and derivative actions. The Commission anticipates receipt of the background study in spring of 1995 and plans to commence work on the topic shortly thereafter.

**Other Subjects**

The major studies in progress described above will dominate the Commission's time and resources during 1995. If time permits the Commission will work other subjects into its agenda. These subjects include two debtor-creditor relations matters — comprehensive review of the homestead exemption and the retirement account exemption. Other subjects are (1) clarification of the rules of evidence concerning electronically recorded original documents and signatures, (2) revision of the statute governing covenants that run with the land, and (3) tolling the statute of limitations while the defendant is out of state.

**Calendar of Topics for Study**

The Commission's calendar of topics is set out in Appendix 2 in this Annual Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>5</sup> Because of the number and

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5. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study. For the current authorization, see 1994 Cal. Stat. res. ch. 81. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions

scope of the topics already on its calendar, the Commission does not at this time recommend any additional topics for Commission study.

### Function and Procedure of Commission

The principal duties of the Commission<sup>6</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>7</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>8</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. As a rule, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes it to study.<sup>9</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>10</sup>

The Commission's work on a recommendation begins after a background study has been prepared. The background study may

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from enforcement of money judgments each 10 years and to recommend any needed revisions.

6. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

7. The Legislative Counsel, an *ex officio* member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

8. See Gov't Code § 8288. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290.

9. See Gov't Code § 8293.

10. See Gov't Code § 8298.

be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Use of expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as consultants have already acquired the considerable background necessary to understand the specific problems under consideration and receive little more than an honorarium for their services. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.<sup>11</sup> The background study is sometimes published with the recommendation published by the Commission or in a law review.<sup>12</sup>

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and are frequently revised by the Commission in later reports to reflect amendments

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11. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

12. For recent background studies published in law reviews, see Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonal*, 23 Pac. L.J. 361 (1991); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992). For a list of background studies published in law reviews before 1991, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

made in the legislative process.<sup>13</sup> The reports provide background with respect to the Commission intent in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>14</sup>

Comments indicate the derivation of a section and often explain its purpose, its relation to other sections, and potential problems as to its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.<sup>15</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>16</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>17</sup>

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13. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after publication of its recommendation. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

14. For examples of such reports, see Appendices 4-6, 8, and 10 in this Annual Report. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the recommendation was proposed. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

15. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); see also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983). Commission Comments are published by Bancroft-Whitney and West Publishing Company in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers.

16. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

17. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>18</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>19</sup>

The reports, recommendations, and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>20</sup>

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18. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications. For price list, see "Commission Publications" *infra*.

19. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

20. See "Commission Publications" *infra*.

### Personnel of Commission

As of November 18, 1994, the following persons were members of the Law Revision Commission:

<b>Members Appointed by Governor</b> <sup>21</sup>	<i>Term Expires</i>
Daniel M. Kolkey, Los Angeles <i>Chairperson</i>	October 1, 1995
Colin W. Wied, San Diego <i>Vice Chairperson</i>	October 1, 1995
Christine W.S. Byrd, Los Angeles	October 1, 1997
Allan L. Fink, San Francisco	October 1, 1997
Arthur K. Marshall, Los Angeles	October 1, 1995
Edwin K. Marzec, Santa Monica	October 1, 1995
Sanford M. Skaggs, Walnut Creek	October 1, 1997

#### **Legislative Members** <sup>22</sup>

Assembly Member Terry Friedman, Sherman Oaks  
Senator Tom Campbell, Los Altos

#### **Legislative Counsel** <sup>23</sup>

Bion M. Gregory, Sacramento

Effective September 1, 1994, the Commission elected Daniel M. Kolkey as Chairperson (succeeding Sanford M. Skaggs), and Colin W. Wied as Vice Chairperson (succeeding Daniel M. Kolkey). The terms of the new officers end August 31, 1995.

In November 1993, Governor Wilson appointed Alan L. Fink to succeed Forrest A. Plant. In November 1993, Governor Wilson

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21. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

22. The Senate and Assembly members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

23. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

reappointed Christine W.S. Byrd and Sanford M. Skaggs as Commission members.

In May 1994, Senator Bill Lockyer became President pro Tempore of the Senate and Senator Tom Campbell was appointed by the Senate Rules Committee as the Commission's Senate Member. Senator Lockyer had been a member since 1985. The Commission particularly appreciates his regular authorship of the Commission's annual resolution of authority during his tenure.

As of November 19, 1994, the following persons were on the Commission's staff:

*Legal*

Nathaniel Sterling  
*Executive Secretary*

Barbara S. Gaal  
*Staff Counsel*

Stan Ulrich  
*Assistant Executive Secretary*

Robert J. Murphy  
*Staff Counsel*

*Secretarial*

Victoria V. Matias  
*Composing Technician*

During early 1994, Carlton X. Osborne, a student at Stanford Law School, was employed as a student legal assistant, and Jennifer Blair Eagleton, a visiting student at Stanford Law School, assisted the Commission as part of the Public Service Program of the University of Pennsylvania Law School.

**Commission Budget**

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 1993-94 fiscal year is \$417,000. This represents a reduction of 40% over the past four years.

In order to remain productive within the limits of the reduced budget allocation, the Commission has substantially reduced its staffing and revised its operations. The Commission now imposes a charge for copies of its materials to cover reproduction and ship-

ping costs. The Commission has reduced the frequency of its meetings to limit travel expenses and other associated meeting costs.

The Commission has eliminated one attorney position, its administrative assistant position, two secretarial positions, and temporary assistance. The Commission now functions with two full-time attorneys (including its Executive Secretary), two part-time attorneys, and one secretary.

The result of these reductions is that substantial burdens have been placed on the Commission's remaining staff to maintain productivity with fewer resources. The staff attorneys, for example, must do all work formerly performed by the administrative assistant and secretaries, in addition to a heavier load of legal work.

There is some mitigation from outside sources available to the Commission. The Commission receives substantial donations of necessary library materials from the legal publishing community, especially Bancroft-Whitney Company, California Continuing Education of the Bar, and West Publishing Company. The Commission receives additional library materials from other legal publishers and other law reform agencies on an exchange basis, and has access to the Stanford University Law Library. The Commission is grateful for their contributions.

The Commission has suffered reduced productivity as a result of the substantial budget cuts, as reflected in the Commission's legislative programs for 1994 and 1995. This state of affairs will continue until more adequate funding is reestablished.

### **Activities of Commission and Staff**

By statute the Commission is directed to cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of the Commission.<sup>24</sup> Pursuant to this directive Commission members and staff have participated in the following activities during 1994.

The Commission's executive secretary met with the executive committees of the State Bar sections on Administration of Justice,

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24. Gov't Code § 8296.

Appellate Courts, and Litigation at the State Bar Annual Meeting, to improve State Bar involvement in Commission studies.

The Commission's executive secretary addressed Legal Services of Northern California and the Sacramento County Bar Association section on Administrative Law, to provide information on the Commission's study of administrative adjudication.

The Commission's executive secretary attended the National Conference of Commissioners on Uniform State Laws.<sup>25</sup>

The Commission's staff received two visiting delegations from the Thailand Juridical Council and a visitor from the Tasmania Law Reform Commission, to exchange information and procedures concerning law reform.

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25. The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws. Gov't Code § 8289. The Commission's executive secretary is an associate member of the National Conference.

### **Legislative History of Recommendations Submitted to 1994 Legislative Session**

The Commission recommendations were included in four bills, a constitutional amendment, and a concurrent resolution recommended for enactment at the 1994 legislative session. Three bills were enacted and the concurrent resolution was adopted.

#### **Power of Attorney Law**

Senate Bill 1907 (1994 Cal. Stat. ch. 307) was introduced by Senator Tom Campbell to effectuate a Commission recommendation. See *Comprehensive Power of Attorney Law*, 24 Cal. L. Revision Comm'n Reports 111 (1994). The bill was enacted after a number of amendments were made. For the law as enacted, with revised Comments and explanatory text, see the report *1995 Comprehensive Power of Attorney Law*, 24 Cal. L. Revision Comm'n Reports 323 (1994).

#### **Orders To Show Cause and Temporary Restraining Orders**

Assembly Bill 3600 (1994 Cal. Stat. ch. 587), presented by Assembly Member Margaret Snyder on behalf of the Assembly Judiciary Committee, included amendments to effectuate a Commission recommendation. See *Orders To Show Cause and Temporary Restraining Orders*, 24 Cal. L. Revision Comm'n Reports \_\_\_\_ (1994) (Appendix 4 *infra*). The bill was enacted after a number of amendments were made.

#### **Family Law**

Assembly Bill 2208 (1994 Cal. Stat. ch. 1269), presented by Assembly Member Louis Caldera on behalf of the Assembly Judiciary Committee, included a number of technical revisions pertaining to the new Family Code.<sup>26</sup> For the official Comments to

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26. The new Family Code was enacted on Commission recommendation in 1992, with a January 1, 1994, operative date. See *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992); 1992 Cal. Stat. chs. 162, 163. In 1993 legislation incorporated into the new code other family law measures enacted in 1992, further revised the provisions concerning child custody and domestic violence prevention, and made numerous additional technical changes in anticipation of the new code's operative date of January 1, 1994., which had been enacted on Commission recommendation. See *1994 Family Code*, 23

sections in AB 2208 sponsored by the Commission, see *Report of the California Law Revision Commission on Chapter 1260 of the Statutes of 1994 (Assembly Bill 2208)*, 24 Cal. L. Revision Comm'n Reports \_\_\_\_ (1994) (Appendix 5 *infra*). The bill was enacted after a number of amendments were made.

#### **Effect of Joint Tenancy Title on Marital Property**

Senate Bill 1868 was introduced by Senator Tom Campbell to effectuate a Commission recommendation. See *Effect of Joint Tenancy Title on Marital Property*, 23 Cal. L. Revision Comm'n Reports 1013 (1993). The bill was referred to the Senate Judiciary Committee, but was not heard.

#### **Trial Court Unification — SCA 3**

Senate Constitutional Amendment 3 was introduced by Senator Bill Lockyer in 1993 and was amended in 1994 to include recommendations of the Commission. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994). The measure passed the Senate but did not receive the necessary two-thirds vote in the Assembly. For a related recommendation, see *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports \_\_\_\_ (1994) (Appendix 6 *infra*).

#### **Resolution Authorizing Topics for Study**

Senate Concurrent Resolution 34 (1994 Cal. Stat. res. ch. 81) was introduced by Senator David Roberti. It continued the Commission's authority to study 23 topics previously authorized for study and deleted seven topics previously authorized for study. The Commission had completed work on all of the deleted topics, and all of them had been the subject of comprehensive legislation enacted on Commission recommendation. The topics deleted from the Commission's calendar are the following:

- (1) Involuntary dismissal for lack of prosecution.
- (2) Statutes of limitation for felonies.

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Cal. L. Revision Comm'n Reports 1, 5 (1993); *Family Code: Child Custody*, 23 Cal. L. Revision Comm'n Reports 1, 15 (1993); *Family Code: Reorganization of Domestic Violence Provisions*, 23 Cal. L. Revision Comm'n Reports 1, 23 (1993).

- (3) Modification of contracts.
- (4) Sovereign immunity.
- (5) Liquidated damages.
- (6) Parol evidence rule.
- (7) Pleadings in civil actions.

In addition, the resolution added authority for the Commission to study whether Code of Civil Procedure Section 351 (tolling statute of limitations while defendant is out-of-state) should be revised.<sup>27</sup>

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>28</sup> and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.<sup>29</sup>

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27. See *Annual Report for 1993*, 23 Cal. L. Revision Comm'n Reports 901, 915 (1993).

28. This study has been carried through \_\_ Cal. 4th \_\_ (1994) and 114 S. Ct. (1993-94 Term).

29. One decision of the United States Supreme Court held that federal law preempted a state policy. In *Livadas v. Bradshaw*, 114 S. Ct. 2068 (1994), a California employer discharged an employee without immediately paying her all wages due, as required under California law. The employee petitioned the Commissioner of Labor to impose a penalty on her former employer, but the Commissioner declined to pursue the matter, interpreting California Labor Code Section 229 to preclude such enforcement as to employees covered by a collective bargaining agreement with an arbitration clause. The employee challenged that nonenforcement policy in court, ultimately convincing the United States Supreme Court that the policy was preempted by the National Labor Relations Act.

- No decision of the California Supreme Court holding state statutes unconstitutional has been found.<sup>30</sup>

### Recommendations

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized.<sup>31</sup>

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<sup>30</sup> One decision of the California Supreme Court imposed a constitutional limitation on application of a state statute. In *Alfredo A. v. Superior Court*, 6 Cal. 4th 1212, 865 P.2d 56, 26 Cal. Rptr. 2d 623 (1994), the court examined the state statutes governing probable cause determinations for extended postarrest detention of juveniles, under which a detained juvenile is entitled to a probable cause hearing within 72 hours after arrest, excluding nonjudicial days. See Welf. & Inst. Code § 632; see also Welf. & Inst. Code § 631. The court rejected a constitutional challenge to the statutory scheme, but concluded (in its lead opinion, authored by Chief Justice Lucas and joined by Justices Panelli and Baxter) that "if the 72-hour period immediately following arrest includes one or more 'nonjudicial days,' ... then the Constitution independently requires that the juvenile be afforded a separate, timely judicial determination of probable cause for any extended period of detention beyond the 72 hours following arrest."

<sup>31</sup> See "Calendar of Topics Authorized for Study," Appendix 2 *infra*.